IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6334 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI PURSHOTTAMBHAI THAKKAR-EX-ASSTT.TEACHER

Versus

UTTAR BHARTIYA SANGH

Appearance:

MR IS SUPEHIA for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/02/2000

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 18.8.81 and for a direction to the respondents to reinstate the petitioner in service with consequential benefits including back wages. The learned counsel for the petitioner states

that the petitioner has already retired on attaining the age of superannuation on 27.2.99 and hence he is not in a position to press the prayer of reinstatement in service. The petitioner has further prayed for a direction to the respondents or any of them to implement the direction contained in the letters dated 29.6.82 at Annexure "D" and dated 13.4.86 at Annexure "GG". A further prayer has been made for quashing and setting aside the judgment and order dated 1.7.88 of the Gujarat Primary Education Tribunal, Ahmedabad in Application No. 64 of 1987 and for a direction to the respondent no. 2 to take a final decision on the action initiated by him as conveyed by the letter dated 22nd November, 1984 as per law.

2. The respondent no. 1 Uttar Bhartiya Sangh is a private trust running Adarsh Hindu Vidyalaya Primary school, Sayajiganj, Vadodara- respondent no. 3 herein. The petitioner was appointed as an Assistant Teacher on temporary basis in Adarsh Primary Hindu Vidyalaya, Baroda with effect from 1.1.79 by a letter dated 30th December, 1978 as per the pay scale mentioned therein. The petitioner was dischrged from service with effect from 20th August, 1981 by a letter dated 18th August, 1981. The petitioner was given salary due till the date and also one month's salary as notice period. The petitioner sent a letter dated 21.8.81 to the Administrativ e Officer, City Primary Education Committee, Vadodara for a direction to the respondent school to reinstate him in service at the earliest. The Administrative Officer, City Primary Education Committee, Vadodara instructed the Principal of the school to reinstate the petitioner in service and make the payment due and admissible as per rules and regulations till the date of the order dated 29th June, 1982, failing which the officer to take necessry action regarding cancellation of recognition of the school in accordance with rules. Still however, the petitioner was not reinstated. The petitioner request ed the Administrative Officer to comply with his order regarding reinstatement of the petitioner's service. The Administrative Officer sent a reply to the petitioner dated 22.11.1984 wherein it is stated that the school has been informed by the office letter dated 29th June,1982 to make payment of salary to the petitioner. The said Institution is not paid grant by the Education Committee. Therefore, there is no question of making payment of salary from the grant. However, the Institution has already been direct ed to make payment to the petitioner. It was also informed that necessary action has been initiated against the respondent school. The District Development Officer, Vadodara by a letter dated 17th April, 1985 sent a letter

to the Administrative Officer, City Primary Education Committee, Vadodara wherein it is stated that an appeal is required to be preferred to the Administrative Officer against the order passed by the Admnistrator of Private Primary school in respect of a teacher as necessary action in this regard was required tobe taken by the Administrative Officer. The application of the petitioner given to the Tribunal was sent back to the Administrative Officer in this respect. The District Education Officer, Vadodara informed the petitioner by a letter dated 4.10.1985 that the office has made attempts to make compromise by holding talks for more than once with the petitioner and the President of the School and members of the management. The President of the school and the members of the management were prepared to take the petitioner on another post as no post of teacher was vacant in their school at the relevant time, but as the petitioner had not given consent in that regard, no compromise could be reached. Due to attitude of the petitioner, the petition had remained pending. Hence, the office was not required to do anything in that regard.

The Administrative Officer, City Primary Education Committee sent a letter dated 13th April, 1986 to the respondent school directing it to send reply of the school. It was also mentioned in the letter that the petitioner was being paid the salary of Rs.500/- on record but in fact, the salary of Rs.350/- was being paid to him. In this regard also, the explanation was required by the Administrative Officer.

3. The petitioner filed Application No.64 of 1987 before Gujarat Primary Education Tribunal, Ahmedabad and that application was dismissed as the Tribunal did not have jurisdiction to try the case.

4. Affidavits have already been exchanged between the parties. Heard the learned counsel for the parties. The learned counsel for the petitioner contended that the order terminating services of the petitioner is discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution as persons junior to the petitioner had been retained while terminating the services of the petitioner. One Smt. Sashi Juneja was also appointed on 1.3.81 on temporary basis. Smt. Sashi Verma was also appointed on 17.9.81. The school is not justified in picking up for discriminatory treatment of termination of the petitioner and retainaing juniors in violation of the provisions of Articles 14 and 16 of the Constitution of India. The

learned counsel for the petitioner further argued that the petitioner was appointed on temporary basis as per the provisions of rule 3 of schedule F of Bombay Primary Education Rules, 1949 as amended by the Notification dated 28th December, 1978 after two years, the petitioner is deemed to be a permanent employee. On the date of termination of the petitioner's services, he was a confirmed teacher of the respondent no.1 and his services could not have been terminat ed except on the ground of misconduct etc. after holding a departmental inquiry and no such inquiry was held, as a result, the impugned order is bad in law. It is further contended that as per rule 13 of the Schedule F of the Rules, services of the petitioner could not have been terminated without approval of the respondent no. 2. However, no such approval either before or after termination of the petitioner's services was obtained by the respondent no. 1. As such, the termination order without obtaining approval of the respondent no. 2 is illegal and not sustainable in the eye of law. The learned counsel for the petitioner further contended that the judgment of the Tribunal is liable to be quashed and set aside as it has failed to exercise its jurisdiction. Section 40F(4) of the Bombay Primary Education Act,1947 reads as under:

"40F(4) : It shall be the duty of the Tribunal to entertain and decide disputes of the nature referred to in section 40E and to deal with and decide all applications and proceedings made or transferred to it under sub-section (2) of section 40G and also to entertin and decide appeal made under sub-section (5) of section 40B."

5. According to the learned advocate for the petitioner, the Tribunal was required to decide the petition on merits and it has failed to do so by dismissing the application on the ground that it has no jurisdiction to decide the same.

6. I have carefully considered the contentions raised by the learned advocate for the petitioner. Services of the petitioner were terminated by an order dated 20th August, 1981 and thereafter, the respondent school was directed by the Administrative Officer, City Primary Education Committee, Vadodara to reinstate the petitioner in service and make payment due as admissible as per rules and regulations. From the affidavit-in-reply filed by the respondent no. 1, it appears that monetary dues as claimed by the petitioner have already been paid in presence of the Inspector and

the petitioner has passed the receipt for the same in compliance with the order dated 29.6.82. The petitioner time and again approached the Administrative Officer for reinstatement. The Institution offered the appointment to the petitioner as Junior Clerk as there was no vacancy at the relevant time for the post of Assistant Teacher, however, the petitioner had not accepted the same. As such, in case there was no vacancy at the relevant time, the institution could not reinstate the petitioner in service and still however, the Institution was ready to keep the petitioner as a Junior clerk till the vacancy of an Assistant Teacher occurred. Thus, the respondent Institution had not committed any wrong in passing such orders and that appears to have been confirmed by the Administrative Officer, District Primary Education Committee. That is why legal action for cancellation of recognition of the respondent school has not been pursuaded. So far as the order of the Tribunal is concerned, the Tribunal has considered the merits of the case as well as on the question of jurisdiction. It is also borne out that the petitioner has not taken any legal action by filing a suit or proceedings against the respondents. The Tribunal has dismissed the petition of the petitioner on the ground that the application of the petitioner did not fall within the jurisdiction of the Tribunal. As the petitioner's services were terminated on 20th August, 1981, the petitioner was given an opportunity to join the services of the the Institution as a junior clerk till the vacancy of an Assistant Teacher occurred in the institution. The petitioner has not chosen to accept the same after such a period and the petitioner has not taken any legal action against the Intitution since 20th August, 1981. Therefore, it would not be proper to pass the order of reinstatement from 20.8.81 till the date of 27th February, 1999 when he attains the age of superannuation. The petitioner is not entitled for any relief. Thus, the petition deserves to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.

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